IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 488 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RABARI KALYANBHAI SUKHABHAI & 2 - Appellants
Versus
THE STATE OF GUJARAT - Opponent

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Appearance :
MR.N.S.SHETH for Appellants No.1 - 3.
MR.A.J.DESAI, ADDL. PUBLIC PROSECUTOR for Opponent,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 12/12/2006

ORAL JUDGMENT

Heard learned Counsel, Mr.Sheth, appearing for the appellants and Mr.Desai, learned A.P.P., for respondent – State.

2. The appellants have challenged the legality and validity of the order of conviction and sentence passed by the learned Special Judge, Mehsana in Special Atrocities Case No.134 of 1993 whereby the the accused persons have been held guilty for the offence punishable under Section 161 of the Gujarat Panchayat Act and sentenced them to undergo rigorous imprisonment for seven days and to pay a fine of Rs.250/- each, in default thereof to undergo further five days rigorous imprisonment. It is ordered that out of the amount of fine, Rs.500/- shall be paid the complainant as against the compensation.

3. Mr.Sheth has taken me through the main grounds of challenge mentioned in the memo of appeal, as well as, oral and documentary evidence led during the trial.

3.1 The appellants-accused initially were arrested for the offence punishable under Section Sections 3 (1) (10) of the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989 and under Section 161 of the Gujarat Panchayat Act.

3.2 At the conclusion of the trial, the learned Judge acquitted all the accused from the charge of atrocities Act. However, it was held that there is sufficient evidence to link the accused with the offence punishable under Section 161 of the Gujarat Panchayat Act and recorded finding accordingly.

4. After the reading the evidence of the complainant-victim, Panchnama of the place of offence and the reasons assigned by the learned trial Judge, the Court is of the view that there is no patent illegality found and the reasons recorded by the learned trial Judge are cogent and convincing. There is no question of mistaken identity so far as accused persons are concerned and it was also ascertaining from the movement of the cows who were introduced in the field of the victim during night hours. As per evidence the complainant had approached the accused persons and they were asked to pay the compensation of Rs.1,000/- on assessment of loss caused by the unauthorized and illegal cattle grazing in a standing crop. However, the accused had refused to pay the amount of compensation and denied their involvement and therefore, the complaint was filed by the complainant.

5. Mr.Sheth on query raised by the Court has fairly

submitted that the appellants-accused does not press this appeal as regards the order of conviction. However, the submission of Mr.Sheth be considered on the point of punishment imposed by the trial Judge. The punishment is very harsh. It was a first offence and therefore, learned Magistrate ought to have imposed the fine. The amount of fine as per the scheme of Section 161 of the Gujarat Panchayat Act is prescribed and the maximum limit is of Rs.300/- and the nature of offence is considered to be graver, if the offence committed is second offence.

5.1 That seven days rigorous imprisonment in such a case should be declared as unduly harsh and it should be reduced. The accused were arrested and they were able to get the bail after laps of some period. At least the Court ought to have thought on the point that the imprisonment imposed is equal to the period undergone. The accused persons were arrested on 18/4/1993 and they were enlarged on bail on 22/4/1993 and therefore they had remained in jail for four days. Therefore, this Court has decided to award some compensation to the victim as per scheme of Section 157 (3) of the Criminal Procedure Code. Of course, the amount of fine has been paid by the accused and the complainant might have received the compensation of Rs.500/- and, therefore, the Court can consider the aspect of awarding compensation to the victim keeping in mind one fact that the accused has been

awarded compensation of Rs.500/- from the entire amount of fine paid and collected.

5.2 In view of scheme of Section 357 the Court has reason to believe that nothing must have been paid till date to the victim because of pendency of the present appeal. The scheme of Section 357 (3) empowers the Court to compensate instead of imposing fine. So the sentence of fine can be quashed and at the same time the Court can decide to award compensation to the victim in case of such a nature where the victim lost crop of a food grain that he might have cultivated for his own use in a small piece of land of one vigha. As Mr.Sheth has not pressed the appeal qua the conviction recorded by the learned trial Judge, the Court can consider the submission made on the point of harshness of the punishment, as there is substance in the submission made by Mr.Sheth. The Court is, therefore, inclined to allow this appeal in part by modifying the order of substantive sentence imposed by the trial Court and the amount of fine imposed.

6. Learned A.P.P.,Mr.Desai has submitted that the Court may pass any appropriate order qua the imposition of fine and the period of substantive sentence.

7. In the result, present appeal appeal is partly allowed. The order of conviction awarded for the

offence punishable under Section 161 of the Gujarat Panchayat Act is hereby confirmed. However, the order of substantive sentence imposed by the trial Court is modified as under:

7.1 The order of fine imposed by the learned trial Judge of Rs.250/- to each of the accused is hereby quashed and the amount of fine paid by the accused be refunded to them. The period of substantive sentence imposed by the trial Court is reduced to the period already undergone.

7.2 All the accused-persons are ordered to pay a compensation of Rs.1000/- each to the complainant. The accused-persons are directed to deposit the amount of Rs.1000/- each before the trial Court within 15 days from today failing which the trial Court may initiate action for recovery of the amount of compensation as amount of fine contemplated under the Code of Criminal Procedure and shall take appropriate steps that may be required.

7.3 It is clarified that if the amount of Rs.500/- has been already paid to the complainant irrespective of the scheme under Section 357 of the

Criminal Procedure Code then, the said amount can be adjusted by the accused persons while depositing the amount of compensation.

7.4 Bail Bond executed by the accused persons shall stand discharged.

(C.K.BUCH, J.)

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